

REMARKS

Claims 1-21 are pending in the application.

Election Under Restriction Requirement

In the Office Action, the Examiner requires Applicant to elect a single invention for prosecution on the merits from one of two patentably distinct inventions. The Examiner contends that these patentably distinct inventions are those of:

- Group I: Claims 1-20, drawn to a method of preparing a carbon composition; and
- Group II: Claim 21, drawn to a composition.

Applicant hereby elects Group I, as set forth in claims 1-20, with traverse. Applicant respectfully requests that the restriction requirement be reconsidered as it is not shown in the Office Action that a serious burden would be required to examine all of the pending claims of Inventions I and II in the application. Specifically, M.P.E.P § 803 provides:

If the search and examination of an application can be made without serious burden, the Examiner *must* examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis supplied.*)

Thus, for a restriction requirement to be proper, the following two criteria must be satisfied: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden in the matter. *See* M.P.E.P § 803.

The Office Action has not shown that the second requirement has been met. Specifically, it has not been shown that it would be a serious burden to search and examine all of the claims of Groups I and II together. Consequently, reconsideration and modification or withdrawal of the restriction requirement is respectfully requested.

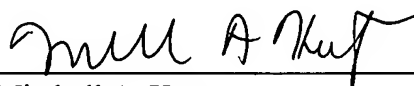
CONCLUSION

In light of the above made election, Applicant respectfully requests an action on the merits for this application. Should the Examiner have any questions regarding this response, the Examiner is courteously invited to contact the undersigned at the telephone number and address listed below.

A Credit Card Payment Form PTO-2038 authorizing payment for a one month extension of time in the amount of \$120.00 is enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629

Respectfully submitted,

NEEDLE & ROSENBERG, P.C.

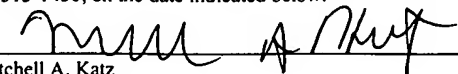


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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence, including any items indicated as attached or included, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP AMENDMENT Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.



Mitchell A. Katz

8 December 2006
Date